

AMENDED IN ASSEMBLY JUNE 24, 2002

AMENDED IN SENATE APRIL 25, 2002

AMENDED IN SENATE APRIL 18, 2002

AMENDED IN SENATE APRIL 3, 2002

**SENATE BILL**

**No. 1242**

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**Introduced by Senator Brulte**

(Principal coauthor: Assembly Member Zettel)

**(Coauthors: Senators McPherson, Scott, and Speier)**

(Coauthors: Assembly Members Correa and La Suer)

January 7, 2002

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An act to amend Section 298.1 of the Penal Code, relating to criminal identification, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1242, as amended, Brulte. Criminal identification: specimen or sample collection: use of reasonable force.

Existing law makes it a misdemeanor for persons convicted of specified offenses to refuse or fail to provide 2 specimens of blood, a saliva sample, and a thumb and palm print impression for law enforcement identification analysis after receiving written notice of the requirement to do so.

This bill would provide that, notwithstanding the above, authorized law enforcement, custodial, or corrections personnel, including specified peace officers, may employ reasonable force to collect required specimens, samples, or print impressions from individuals who, after request, refuse to provide those specimens, samples, or print

impressions. The bill would require the Department of Corrections and the ~~California~~ *Department of the Youth Authority* to adopt regulations regarding the use of reasonable force. The bill would require the Board of Corrections to adopt regulations regarding the use of reasonable force for local detention facilities. The bill would also require the Department of Corrections, the ~~California~~ *Department of the Youth Authority*, and the Board of Corrections to report to the Legislature, no later than January 1, 2005, regarding implementation of the provisions of the bill, as specified.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 298.1 of the Penal Code is amended to  
2 read:

3 298.1. (a) As of the effective date of this chapter, any person  
4 who refuses to give any or all of the following, blood specimens,  
5 saliva samples, or thumb or palm print impressions as required by  
6 this chapter, once he or she has received written notice from the  
7 Department of Justice, the Department of Corrections, any law  
8 enforcement personnel, or officer of the court that he or she is  
9 required to provide specimens, samples, and print impressions  
10 pursuant to this chapter is guilty of a misdemeanor. The refusal or  
11 failure to give any or all of the following, a blood specimen, saliva  
12 sample, or thumb or palm print impression is punishable as a  
13 separate offense by both a fine of five hundred dollars (\$500) and  
14 imprisonment of up to one year in a county jail, or if the person is  
15 already imprisoned in the state prison, by sanctions for  
16 misdemeanors according to a schedule determined by the  
17 Department of Corrections.

18 (b) (1) Notwithstanding subdivision (a), authorized law  
19 enforcement, custodial, or corrections personnel, including peace  
20 officers as defined in Sections 830, 830.1, 830.5, and 830.55, or  
21 subdivision (d) of Section 830.2, may employ reasonable force to  
22 collect blood specimens, saliva samples, or thumb or palm print  
23 impressions pursuant to this chapter from individuals who, after



1 written or oral request, refuse to provide those specimens,  
2 samples, or thumb or palm print impressions.

3 (2) The withdrawal of blood shall be performed in a medically  
4 approved manner in accordance with the requirements of  
5 paragraph (2) of subdivision (b) of Section 298.

6 (3) The use of reasonable force as provided in this subdivision  
7 shall be carried out in a manner consistent with regulations and  
8 guidelines adopted pursuant to subdivision (c).

9 (c) (1) The Department of Corrections and the ~~California~~  
10 *Department of the Youth Authority* shall adopt regulations  
11 governing the use of reasonable force as provided in subdivision  
12 (b), which shall include the following:

13 (A) The term “use of reasonable force” shall be defined as the  
14 force that an objective, trained and competent correctional  
15 employee, faced with similar facts and circumstances, would  
16 consider necessary and reasonable to gain compliance with this  
17 chapter.

18 (B) The use of reasonable force shall not be authorized without  
19 the prior written authorization of the supervising officer on duty.  
20 The authorization shall include information that reflects the fact  
21 that the offender was asked to provide the requisite specimen,  
22 sample, or impression and refused.

23 (C) The use of reasonable force shall be preceded by efforts to  
24 secure voluntary compliance with this section.

25 (D) If the use of reasonable force includes a cell extraction, the  
26 regulations shall provide that the extraction be videotaped.

27 (2) The Board of Corrections shall adopt guidelines governing  
28 the use of reasonable force as provided in subdivision (b) for local  
29 detention facilities, which shall include the following:

30 (A) The term “use of reasonable force” shall be defined as the  
31 force that an objective, trained and competent correctional  
32 employee, faced with similar facts and circumstances, would  
33 consider necessary and reasonable to gain compliance with this  
34 chapter.

35 (B) The use of reasonable force shall not be authorized without  
36 the prior written authorization of the supervising officer on duty.  
37 The authorization shall include information that reflects the fact  
38 that the offender was asked to provide the requisite specimen,  
39 sample, or impression and refused.

1 (C) The use of reasonable force shall be preceded by efforts to  
2 secure voluntary compliance with this ~~chapter~~ *section*.

3 (D) If the use of reasonable force includes a cell extraction, the  
4 extraction shall be videotaped.

5 (3) The Department of Corrections, the Department of the  
6 Youth Authority, and the Board of Corrections shall report to the  
7 Legislature not later than January 1, 2005, on the use of reasonable  
8 force pursuant to this section ~~which~~. *The report* shall include, but  
9 is not limited to, the number of refusals; the number of incidents  
10 of the use of reasonable force under this section; the type of force  
11 used; the efforts undertaken to obtain voluntary compliance, if  
12 any; *and* whether any medical attention was needed by the  
13 prisoner or personnel as a result of force being used.

14 SEC. 2. This act is an urgency statute necessary for the  
15 immediate preservation of the public peace, health, or safety  
16 within the meaning of Article IV of the Constitution and shall go  
17 into immediate effect. The facts constituting the necessity are:

18 In order to enable the State's DNA and ~~forensic~~ *Forensic*  
19 Identification Data Base and Data Bank ~~Program~~ *program* to  
20 expeditiously and accurately solve crime and exonerate the  
21 innocent in accordance with its statutory mandate, it is necessary  
22 that this act take immediate effect.

